

# SENATE AMENDMENTS

2<sup>nd</sup> Printing

By: Smithee, Moody, Canales, et al.

H.B. No. 34

A BILL TO BE ENTITLED

AN ACT

relating to measures to prevent wrongful convictions.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Chapter 2, Code of Criminal Procedure, is amended by adding Articles 2.023 and 2.32 to read as follows:

Art. 2.023. TRACKING USE OF CERTAIN TESTIMONY. (a) In this article:

(1) "Attorney representing the state" means a district attorney, a criminal district attorney, or a county attorney with criminal jurisdiction.

(2) "Correctional facility" has the meaning assigned by Section 1.07, Penal Code.

(b) An attorney representing the state shall track:

(1) the use of proffered testimony of a person to whom a defendant made a statement against the defendant's interest while the person was imprisoned or confined in the same correctional facility as the defendant, regardless of whether the testimony is presented at trial; and

(2) any benefits offered or provided to a person in exchange for testimony described by Subdivision (1).

Art. 2.32. ELECTRONIC RECORDING OF CUSTODIAL INTERROGATIONS. (a) In this article:

(1) "Electronic recording" means an audio or audiovisual electronic recording that begins at the time the person

1 being interrogated enters the area of the place of detention in  
2 which the interrogation will take place and that continues until  
3 the time the interrogation ceases.

4 (2) "Place of detention" means a police station or  
5 other building that is a place of operation for a law enforcement  
6 agency, including a municipal police department or county sheriff's  
7 department, and is owned or operated by the law enforcement agency  
8 for the purpose of detaining individuals in connection with the  
9 suspected violation of a penal law. The term does not include a  
10 courthouse.

11 (b) A law enforcement agency shall make an electronic  
12 recording of any custodial interrogation that is of a person  
13 suspected of committing or charged with the commission of a felony  
14 offense and that the law enforcement agency conducts in a place of  
15 detention.

16 (c) An electronic recording of a custodial interrogation  
17 that complies with this article is exempt from public disclosure as  
18 provided by Section 552.108, Government Code.

19 SECTION 2. Article 38.075, Code of Criminal Procedure, is  
20 amended by adding Subsection (c) to read as follows:

21 (c) Evidence of a prior offense committed by a person who  
22 gives testimony described by Subsection (a) may be admitted for the  
23 purpose of impeachment if the person received a benefit described  
24 by Article 39.14(h-1)(2) with respect to the offense, regardless of  
25 whether the person was convicted of the offense.

26 SECTION 3. Section 3, Article 38.20, Code of Criminal  
27 Procedure, is amended by amending Subsection (c) and adding

1 Subsection (d) to read as follows:

2 (c) The model policy or any other policy adopted by a law  
3 enforcement agency under Subsection (a) must:

4 (1) be based on:

5 (A) credible field, academic, or laboratory  
6 research on eyewitness memory;

7 (B) relevant policies, guidelines, and best  
8 practices designed to reduce erroneous eyewitness identifications  
9 and to enhance the reliability and objectivity of eyewitness  
10 identifications; and

11 (C) other relevant information as appropriate;  
12 and

13 (2) include ~~[address]~~ the following information  
14 regarding evidence-based practices ~~[topics]~~:

15 (A) procedures for selecting ~~[the selection of]~~  
16 photograph and live lineup filler photographs or participants to  
17 ensure that the photographs or participants:

18 (i) are consistent in appearance with the  
19 description of the alleged perpetrator that was provided by a  
20 witness; and

21 (ii) do not make the suspect noticeably  
22 stand out;

23 (B) instructions given to a witness before  
24 conducting a photograph or live lineup identification procedure  
25 that must include a statement that the person who committed the  
26 offense may or may not be present in the procedure and that the  
27 investigation will continue regardless of whether the witness

1 identifies a person in the procedure;

2 (C) procedures for documenting and preserving  
3 ~~the [documentation and preservation of]~~ results of a photograph or  
4 live lineup identification procedure, including the documentation  
5 of witness statements, regardless of the outcome of the procedure;

6 (D) procedures for administering a photograph or  
7 live lineup identification procedure to an illiterate person or a  
8 person with limited English language proficiency;

9 (E) for a live lineup identification procedure,  
10 ~~[if practicable,]~~ procedures for assigning an administrator who is  
11 unaware of which member of the live lineup is the suspect in the  
12 case ~~[or alternative procedures designed to prevent opportunities~~  
13 ~~to influence the witness];~~

14 (F) for a photograph identification procedure,  
15 procedures for assigning an administrator who is capable of  
16 administering a photograph array in a blind manner or in a manner  
17 consistent with other proven or supported best practices designed  
18 to prevent opportunities to influence the witness; and

19 (G) any other procedures or best practices  
20 supported by credible research or commonly accepted as a means to  
21 reduce erroneous eyewitness identifications and to enhance the  
22 objectivity and reliability of eyewitness identifications.

23 (d) A witness who makes an identification based on a  
24 photograph or live lineup identification procedure shall be asked  
25 immediately after the procedure to state, in the witness's own  
26 words, the witness's level of confidence in making the  
27 identification. A law enforcement agency shall document in

1 accordance with Subsection (c)(2)(C) any statement made under this  
2 subsection.

3 SECTION 4. Section 5, Article 38.20, Code of Criminal  
4 Procedure, is amended to read as follows:

5 Sec. 5. (a) Any evidence or expert testimony presented by  
6 the state or the defendant on the subject of eyewitness  
7 identification is admissible only subject to compliance with the  
8 Texas Rules of Evidence. Except as provided by Subsection (c),  
9 evidence [~~Evidence~~] of compliance with the model policy or any  
10 other policy adopted under this article [~~or with the minimum~~  
11 ~~requirements of this article~~] is not a condition precedent to the  
12 admissibility of an out-of-court eyewitness identification.

13 (b) Notwithstanding Article 38.23 as that article relates  
14 to a violation of a state statute and except as provided by  
15 Subsection (c), a failure to conduct a photograph or live lineup  
16 identification procedure in substantial compliance with the model  
17 policy or any other policy adopted under this article [~~or with the~~  
18 ~~minimum requirements of this article~~] does not bar the admission of  
19 eyewitness identification testimony in the courts of this state.

20 (c) If a witness makes an in-court identification of the  
21 accused, the eyewitness identification is admissible into evidence  
22 against the accused only if the evidence is accompanied by:

23 (1) the details of any prior identification made of  
24 the accused by the witness, including the manner in which that  
25 identification procedure was conducted; and

26 (2) evidence showing the witness's confidence level as  
27 described by the witness at the time of the prior identification.

1 SECTION 5. Section 1, Article 38.22, Code of Criminal  
2 Procedure, is amended to read as follows:

3 Sec. 1. In this article:

4 (1) "Electronic recording" has the meaning assigned by  
5 Article 2.32.

6 (2) "Written [~~a written~~] statement" [~~of an accused~~]  
7 means:

8 (A) [~~(1)~~] a statement made by the accused in the  
9 accused's [~~his~~] own handwriting; or

10 (B) [~~(2)~~] a statement made in a language the  
11 accused can read or understand that:

12 (i) [~~(A)~~] is signed by the accused; or

13 (ii) [~~(B)~~] bears the mark of the accused,  
14 if the accused is unable to write and the mark is witnessed by a  
15 person other than a peace officer.

16 SECTION 6. Sections 3(a) and (b), Article 38.22, Code of  
17 Criminal Procedure, are amended to read as follows:

18 (a) Except as provided by Section 9, no oral, sign language,  
19 or written statement made as a result of a custodial interrogation  
20 of a person accused of a felony offense is admissible against the  
21 accused in a criminal proceeding, and no [~~No~~] oral or sign language  
22 statement made as a result of a custodial interrogation of a person  
23 [~~of an~~] accused of any other offense is [~~made as a result of~~  
24 ~~custodial interrogation shall be~~] admissible against the accused in  
25 a criminal proceeding, unless:

26 (1) an electronic recording [~~, which may include~~  
27 ~~motion picture, video tape, or other visual recording,~~] is made of

1 the custodial interrogation [~~statement~~];

2 (2) after being [~~prior to the statement but during the~~  
3 ~~recording the accused is~~] given the warning described by Section  
4 2(a), [~~in Subsection (a) of Section 2 above and~~] the accused  
5 knowingly, intelligently, and voluntarily waives any rights set out  
6 in the warning;

7 (3) the recording device was capable of making an  
8 accurate recording, the operator was competent, and the recording  
9 is accurate and has not been altered;

10 (4) all voices on the recording are identified; and

11 (5) not later than the 20th day before the date of the  
12 proceeding, the attorney representing the defendant is provided  
13 with a true, complete, and accurate copy of all recordings of the  
14 defendant made under this article.

15 (b) Every electronic recording of [~~any statement made by an~~  
16 ~~accused during~~] a custodial interrogation of an accused must be  
17 preserved until such time as the defendant's conviction for any  
18 offense relating thereto is final, all direct appeals therefrom are  
19 exhausted, or the prosecution of such offenses is barred by law.

20 SECTION 7. Article 38.22, Code of Criminal Procedure, is  
21 amended by adding Section 9 to read as follows:

22 Sec. 9. An oral, sign language, or written statement of an  
23 accused made as a result of a custodial interrogation is admissible  
24 without an electronic recording otherwise required by Section 3(a)  
25 if the attorney introducing the statement shows good cause for the  
26 lack of the recording. For purposes of this section, "good cause"  
27 includes:

1           (1) the accused refused to respond to questioning or  
2 cooperate in a custodial interrogation of which an electronic  
3 recording was made, provided that:

4                   (A) a contemporaneous recording of the refusal  
5 was made; or

6                   (B) the peace officer or agent of the law  
7 enforcement agency conducting the interrogation attempted, in good  
8 faith, to record the accused's refusal but the accused was  
9 unwilling to have the refusal recorded, and the peace officer or  
10 agent contemporaneously, in writing, documented the refusal;

11           (2) the statement was not made exclusively as the  
12 result of a custodial interrogation, including a statement that was  
13 made spontaneously by the accused and not in response to a question  
14 by a peace officer;

15           (3) the peace officer or agent of the law enforcement  
16 agency conducting the interrogation attempted, in good faith, to  
17 record the interrogation but the recording equipment did not  
18 function, the officer or agent inadvertently operated the equipment  
19 incorrectly, or the equipment malfunctioned or stopped operating  
20 without the knowledge of the officer or agent;

21           (4) exigent public safety concerns prevented or  
22 rendered infeasible the making of an electronic recording of the  
23 custodial interrogation; or

24           (5) the peace officer or agent of the law enforcement  
25 agency conducting the interrogation reasonably believed at the time  
26 the interrogation began that the accused was not taken into custody  
27 for or being interrogated concerning the commission of a felony

1 offense.

2 SECTION 8. Article 39.14, Code of Criminal Procedure, is  
3 amended by adding Subsection (h-1) to read as follows:

4 (h-1) In this subsection, "correctional facility" has the  
5 meaning assigned by Section 1.07, Penal Code. Notwithstanding any  
6 other provision of this article, if the state intends to use at a  
7 defendant's trial testimony of a person to whom the defendant made a  
8 statement against the defendant's interest while the person was  
9 imprisoned or confined in the same correctional facility as the  
10 defendant, the state shall disclose to the defendant:

11 (1) the person's complete criminal history, including  
12 any charges that were dismissed or reduced as part of a plea  
13 bargain;

14 (2) any grant, promise, or offer of immunity from  
15 prosecution, reduction of sentence, or other leniency or special  
16 treatment, given by the state in exchange for the person's  
17 testimony;

18 (3) information concerning other criminal cases in  
19 which the person has testified, or offered to testify, against a  
20 defendant with whom the person was imprisoned or confined,  
21 including any grant, promise, or offer as described by Subdivision  
22 (2) given by the state in exchange for the testimony; and

23 (4) other information in the possession, custody, or  
24 control of the state that is relevant to the person's credibility.

25 SECTION 9. Section 1701.253, Occupations Code, is amended  
26 by adding Subsection (n) to read as follows:

27 (n) As part of the minimum curriculum requirements, the

1 commission shall establish a statewide comprehensive education and  
2 training program on eyewitness identification, including the  
3 variables that affect a witness's vision and memory, practices for  
4 minimizing contamination, and effective eyewitness identification  
5 protocols.

6 SECTION 10. STUDY REGARDING USE OF DRUG FIELD TEST KITS.

7 (a) The Texas Forensic Science Commission shall conduct a study  
8 regarding the use of drug field test kits by law enforcement  
9 agencies in this state. The commission shall:

10 (1) evaluate the quality, accuracy, and reliability of  
11 drug field test kits;

12 (2) identify any common problems with drug field test  
13 kits;

14 (3) evaluate the availability and adequacy of training  
15 for law enforcement officers regarding the use of drug field test  
16 kits and the interpretation of the test results; and

17 (4) develop legislative recommendations regarding the  
18 use of drug field test kits by law enforcement agencies and  
19 regarding related training for law enforcement officers.

20 (b) Not later than December 1, 2018, the Texas Forensic  
21 Science Commission shall submit to the governor, the lieutenant  
22 governor, and each member of the legislature a written report that  
23 summarizes the results of the study conducted under this section  
24 and includes any legislative recommendations.

25 SECTION 11. CRIME SCENE INVESTIGATION STUDY. (a) The Texas  
26 Forensic Science Commission shall conduct a study regarding the  
27 manner in which crime scene investigations are conducted in this

1 state. The commission shall:

2 (1) evaluate the standard procedures used in  
3 processing a crime scene and evaluate the quality of crime scene  
4 investigations;

5 (2) evaluate the availability and adequacy of the  
6 training or continuing education provided to crime scene  
7 investigators; and

8 (3) develop legislative recommendations regarding  
9 improvements to crime scene investigation procedures and training.

10 (b) Not later than December 1, 2018, the Texas Forensic  
11 Science Commission shall submit to the governor, the lieutenant  
12 governor, and each member of the legislature a written report that  
13 summarizes the results of the study conducted under this section  
14 and includes any legislative recommendations.

15 SECTION 12. Article 2.32 and Section 9, Article 38.22, Code  
16 of Criminal Procedure, as added by this Act, and Sections 1 and 3,  
17 Article 38.22, Code of Criminal Procedure, as amended by this Act,  
18 apply to the use of a statement made as a result of a custodial  
19 interrogation that occurs on or after the effective date of this  
20 Act, regardless of whether the criminal offense giving rise to that  
21 interrogation is committed before, on, or after the effective date  
22 of this Act.

23 SECTION 13. Article 38.075(c), Code of Criminal Procedure,  
24 as added by this Act, applies to the admissibility of evidence in a  
25 criminal proceeding that commences on or after the effective date  
26 of this Act. The admissibility of evidence in a criminal proceeding  
27 that commences before the effective date of this Act is governed by

1 the law in effect on the date the proceeding commenced, and the  
2 former law is continued in effect for that purpose.

3 SECTION 14. (a) Section 3(d), Article 38.20, Code of  
4 Criminal Procedure, as added by this Act, applies only to a  
5 photograph or live lineup identification procedure conducted on or  
6 after the effective date of this Act, regardless of whether the  
7 offense to which the procedure is related was committed before, on,  
8 or after the effective date of this Act.

9 (b) Section 5, Article 38.20, Code of Criminal Procedure, as  
10 amended by this Act, applies only to the trial of an offense with  
11 respect to which a prior identification of the accused occurred on  
12 or after the effective date of this Act, regardless of whether the  
13 offense that is the subject of the trial was committed before, on,  
14 or after the effective date of this Act.

15 SECTION 15. Article 39.14(h-1), Code of Criminal Procedure,  
16 as added by this Act, applies to the prosecution of an offense  
17 committed on or after the effective date of this Act. The  
18 prosecution of an offense committed before the effective date of  
19 this Act is governed by the law in effect on the date the offense was  
20 committed, and the former law is continued in effect for that  
21 purpose. For purposes of this section, an offense is committed  
22 before the effective date of this Act if any element of the offense  
23 occurs before the effective date.

24 SECTION 16. Not later than January 1, 2018, the Texas  
25 Commission on Law Enforcement shall establish the eyewitness  
26 identification education and training program as required by  
27 Section 1701.253(n), Occupations Code, as added by this Act.

1 SECTION 17. This Act takes effect September 1, 2017.

ADOPTED

MAY 23 2017

By: Charles Perry Secretary of the Senate H.B. No. 34  
Substitute the following for H.B. No. 34:  
By: [Signature] C.S. H.B. No. 34

A BILL TO BE ENTITLED

AN ACT

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relating to measures to prevent wrongful convictions.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Chapter 2, Code of Criminal Procedure, is amended by adding Articles 2.023 and 2.32 to read as follows:

Art. 2.023. TRACKING USE OF CERTAIN TESTIMONY. (a) In this article:

(1) "Attorney representing the state" means a district attorney, a criminal district attorney, or a county attorney with criminal jurisdiction.

(2) "Correctional facility" has the meaning assigned by Section 1.07, Penal Code.

(b) An attorney representing the state shall track:

(1) the use of testimony of a person to whom a defendant made a statement against the defendant's interest while the person was imprisoned or confined in the same correctional facility as the defendant, regardless of whether the testimony is presented at trial; and

(2) any benefits offered or provided to a person in exchange for testimony described by Subdivision (1).

Art. 2.32. ELECTRONIC RECORDING OF CUSTODIAL INTERROGATIONS. (a) In this article:

(1) "Electronic recording" means an audiovisual electronic recording, or an audio recording if an audiovisual

1 electronic recording is unavailable, that is authentic, accurate,  
2 and unaltered.

3 (2) "Law enforcement agency" means an agency of the  
4 state, or of a county, municipality, or other political subdivision  
5 of this state, that employs peace officers who, in the routine  
6 performance of the officers' duties, conduct custodial  
7 interrogations of persons suspected of committing criminal  
8 offenses.

9 (3) "Place of detention" means a police station or  
10 other building that is a place of operation for a law enforcement  
11 agency, including a municipal police department or county sheriff's  
12 department, and is owned or operated by the law enforcement agency  
13 for the purpose of detaining persons in connection with the  
14 suspected violation of a penal law. The term does not include a  
15 courthouse.

16 (b) Unless good cause exists that makes electronic  
17 recording infeasible, a law enforcement agency shall make a  
18 complete and contemporaneous electronic recording of any custodial  
19 interrogation that occurs in a place of detention and is of a person  
20 suspected of committing or charged with the commission of an  
21 offense under:

22 (1) Section 19.02, Penal Code (murder);

23 (2) Section 19.03, Penal Code (capital murder);

24 (3) Section 20.03, Penal Code (kidnapping);

25 (4) Section 20.04, Penal Code (aggravated  
26 kidnapping);

27 (5) Section 20A.02, Penal Code (trafficking of

1 persons);

2 (6) Section 20A.03, Penal Code (continuous  
3 trafficking of persons);

4 (7) Section 21.02, Penal Code (continuous sexual abuse  
5 of young child or children);

6 (8) Section 21.11, Penal Code (indecent with a  
7 child);

8 (9) Section 21.12, Penal Code (improper relationship  
9 between educator and student);

10 (10) Section 22.011, Penal Code (sexual assault);

11 (11) Section 22.021, Penal Code (aggravated sexual  
12 assault); or

13 (12) Section 43.25, Penal Code (sexual performance by  
14 a child).

15 (c) For purposes of Subsection (b), an electronic recording  
16 of a custodial interrogation is complete only if the recording:

17 (1) begins at or before the time the person being  
18 interrogated enters the area of the place of detention in which the  
19 custodial interrogation will take place or receives a warning  
20 described by Section 2(a), Article 38.22, whichever is earlier; and

21 (2) continues until the time the interrogation ceases.

22 (d) For purposes of Subsection (b), good cause that makes  
23 electronic recording infeasible includes the following:

24 (1) the person being interrogated refused to respond  
25 or cooperate in a custodial interrogation at which an electronic  
26 recording was being made, provided that:

27 (A) a contemporaneous recording of the refusal

1 was made; or

2 (B) the peace officer or agent of the law  
3 enforcement agency conducting the interrogation attempted, in good  
4 faith, to record the person's refusal but the person was unwilling  
5 to have the refusal recorded, and the peace officer or agent  
6 contemporaneously, in writing, documented the refusal;

7 (2) the statement was not made as the result of a  
8 custodial interrogation, including a statement that was made  
9 spontaneously by the accused and not in response to a question by a  
10 peace officer;

11 (3) the peace officer or agent of the law enforcement  
12 agency conducting the interrogation attempted, in good faith, to  
13 record the interrogation but the recording equipment did not  
14 function, the officer or agent inadvertently operated the equipment  
15 incorrectly, or the equipment malfunctioned or stopped operating  
16 without the knowledge of the officer or agent;

17 (4) exigent public safety concerns prevented or  
18 rendered infeasible the making of an electronic recording of the  
19 statement; or

20 (5) the peace officer or agent of the law enforcement  
21 agency conducting the interrogation reasonably believed at the time  
22 the interrogation commenced that the person being interrogated was  
23 not taken into custody for or being interrogated concerning the  
24 commission of an offense listed in Subsection (b).

25 (e) A recording of a custodial interrogation that complies  
26 with this article is exempt from public disclosure as provided by  
27 Section 552.108, Government Code.

1 SECTION 2. Article 38.075, Code of Criminal Procedure, is  
2 amended by adding Subsection (c) to read as follows:

3 (c) Evidence of a prior offense committed by a person who  
4 gives testimony described by Subsection (a) may be admitted for the  
5 purpose of impeachment if the person received a benefit described  
6 by Article 39.14(h-1)(2) with respect to the offense, regardless of  
7 whether the person was convicted of the offense.

8 SECTION 3. Section 3, Article 38.20, Code of Criminal  
9 Procedure, is amended by amending Subsection (c) and adding  
10 Subsection (d) to read as follows:

11 (c) The model policy or any other policy adopted by a law  
12 enforcement agency under Subsection (a) must:

13 (1) be based on:

14 (A) credible field, academic, or laboratory  
15 research on eyewitness memory;

16 (B) relevant policies, guidelines, and best  
17 practices designed to reduce erroneous eyewitness identifications  
18 and to enhance the reliability and objectivity of eyewitness  
19 identifications; and

20 (C) other relevant information as appropriate;

21 and

22 (2) include [~~address~~] the following information  
23 regarding evidence-based practices [~~topics~~]:

24 (A) procedures for selecting [~~the selection of~~]  
25 photograph and live lineup filler photographs or participants to  
26 ensure that the photographs or participants:

27 (i) are consistent in appearance with the

1 description of the alleged perpetrator that was provided by a  
2 witness; and

3 (ii) do not make the suspect noticeably  
4 stand out;

5 (B) instructions given to a witness before  
6 conducting a photograph or live lineup identification procedure  
7 that must include a statement that the person who committed the  
8 offense may or may not be present in the procedure and that the  
9 investigation will continue regardless of whether the witness  
10 identifies a person in the procedure;

11 (C) procedures for documenting and preserving  
12 the [~~documentation and preservation of~~] results of a photograph or  
13 live lineup identification procedure, including the documentation  
14 of witness statements, regardless of the outcome of the procedure;

15 (D) procedures for administering a photograph or  
16 live lineup identification procedure to an illiterate person or a  
17 person with limited English language proficiency;

18 (E) for a live lineup identification procedure,  
19 [~~if practicable,~~] procedures for assigning an administrator who is  
20 unaware of which member of the live lineup is the suspect in the  
21 case [~~or alternative procedures designed to prevent opportunities~~  
22 ~~to influence the witness~~];

23 (F) for a photograph identification procedure,  
24 procedures for assigning an administrator who is capable of  
25 administering a photograph array in a blind manner or in a manner  
26 consistent with other proven or supported best practices designed  
27 to prevent opportunities to influence the witness; and

1 (G) any other procedures or best practices  
2 supported by credible research or commonly accepted as a means to  
3 reduce erroneous eyewitness identifications and to enhance the  
4 objectivity and reliability of eyewitness identifications.

5 (d) A witness who makes an identification based on a  
6 photograph or live lineup identification procedure shall be asked  
7 immediately after the procedure to state, in the witness's own  
8 words, the witness's level of confidence in making the  
9 identification. A law enforcement agency shall document in  
10 accordance with Subsection (c)(2)(C) any statement made under this  
11 subsection.

12 SECTION 4. Section 5, Article 38.20, Code of Criminal  
13 Procedure, is amended to read as follows:

14 Sec. 5. (a) Any evidence or expert testimony presented by  
15 the state or the defendant on the subject of eyewitness  
16 identification is admissible only subject to compliance with the  
17 Texas Rules of Evidence. Except as provided by Subsection (c),  
18 evidence [Evidence] of compliance with the model policy or any  
19 other policy adopted under this article [~~or with the minimum~~  
20 ~~requirements of this article]~~ is not a condition precedent to the  
21 admissibility of an out-of-court eyewitness identification.

22 (b) Notwithstanding Article 38.23 as that article relates  
23 to a violation of a state statute and except as provided by  
24 Subsection (c), a failure to conduct a photograph or live lineup  
25 identification procedure in substantial compliance with the model  
26 policy or any other policy adopted under this article [~~or with the~~  
27 ~~minimum requirements of this article]~~ does not bar the admission of

1 eyewitness identification testimony in the courts of this state.

2 (c) If a witness who has previously made an out-of-court  
3 photograph or live lineup identification of the accused makes an  
4 in-court identification of the accused, the eyewitness  
5 identification is admissible into evidence against the accused only  
6 if the evidence is accompanied by:

7 (1) the details of each prior photograph or live  
8 lineup identification made of the accused by the witness, including  
9 the manner in which the identification procedure was conducted; and

10 (2) evidence showing the witness's confidence level as  
11 described by the witness at the time of a prior photograph or live  
12 lineup identification specified under Subdivision (1).

13 SECTION 5. Article 38.22, Code of Criminal Procedure, is  
14 amended by adding Section 9 to read as follows:

15 Sec. 9. Notwithstanding any other provision of this  
16 article, no oral, sign language, or written statement that is made  
17 by a person accused of an offense listed in Article 2.32(b) and made  
18 as a result of a custodial interrogation occurring in a place of  
19 detention, as that term is defined by Article 2.32, is admissible  
20 against the accused in a criminal proceeding unless:

21 (1) an electronic recording was made of the statement,  
22 as required by Article 2.32(b); or

23 (2) the attorney representing the state offers proof  
24 satisfactory to the court that good cause, as described by Article  
25 2.32(d), existed that made electronic recording of the custodial  
26 interrogation infeasible.

27 SECTION 6. Article 39.14, Code of Criminal Procedure, is

1 amended by adding Subsection (h-1) to read as follows:

2 (h-1) In this subsection, "correctional facility" has the  
3 meaning assigned by Section 1.07, Penal Code. Notwithstanding any  
4 other provision of this article, if the state intends to use at a  
5 defendant's trial testimony of a person to whom the defendant made a  
6 statement against the defendant's interest while the person was  
7 imprisoned or confined in the same correctional facility as the  
8 defendant, the state shall disclose to the defendant:

9 (1) the person's complete criminal history, including  
10 any charges that were dismissed or reduced as part of a plea  
11 bargain;

12 (2) any grant, promise, or offer of immunity from  
13 prosecution, reduction of sentence, or other leniency or special  
14 treatment, given by the state in exchange for the person's  
15 testimony;

16 (3) information concerning other criminal cases in  
17 which the person has testified, or offered to testify, against a  
18 defendant with whom the person was imprisoned or confined,  
19 including any grant, promise, or offer as described by Subdivision  
20 (2) given by the state in exchange for the testimony; and

21 (4) other information in the possession, custody, or  
22 control of the state that is relevant to the person's credibility.

23 SECTION 7. Section 1701.253, Occupations Code, is amended  
24 by adding Subsection (n) to read as follows:

25 (n) As part of the minimum curriculum requirements, the  
26 commission shall establish a statewide comprehensive education and  
27 training program on eyewitness identification, including the

1 variables that affect a witness's vision and memory, practices for  
2 minimizing contamination, and effective eyewitness identification  
3 protocols.

4 SECTION 8. STUDY REGARDING USE OF DRUG FIELD TEST KITS. (a)  
5 The Texas Forensic Science Commission shall conduct a study  
6 regarding the use of drug field test kits by law enforcement  
7 agencies in this state. The commission shall:

8 (1) evaluate the quality, accuracy, and reliability of  
9 drug field test kits;

10 (2) identify any common problems with drug field test  
11 kits;

12 (3) evaluate the availability and adequacy of training  
13 for law enforcement officers regarding the use of drug field test  
14 kits and the interpretation of the test results; and

15 (4) develop legislative recommendations regarding the  
16 use of drug field test kits by law enforcement agencies and  
17 regarding related training for law enforcement officers.

18 (b) Not later than December 1, 2018, the Texas Forensic  
19 Science Commission shall submit to the governor, the lieutenant  
20 governor, and each member of the legislature a written report that  
21 summarizes the results of the study conducted under this section  
22 and includes any legislative recommendations.

23 SECTION 9. CRIME SCENE INVESTIGATION STUDY. (a) The Texas  
24 Forensic Science Commission shall conduct a study regarding the  
25 manner in which crime scene investigations are conducted in this  
26 state. The commission shall:

27 (1) evaluate the standard procedures used in

1 processing a crime scene and evaluate the quality of crime scene  
2 investigations;

3           (2) evaluate the availability and adequacy of the  
4 training or continuing education provided to crime scene  
5 investigators; and

6           (3) develop legislative recommendations regarding  
7 improvements to crime scene investigation procedures and training.

8           (b) Not later than December 1, 2018, the Texas Forensic  
9 Science Commission shall submit to the governor, the lieutenant  
10 governor, and each member of the legislature a written report that  
11 summarizes the results of the study conducted under this section  
12 and includes any legislative recommendations.

13           SECTION 10. Article 2.32 and Section 9, Article 38.22, Code  
14 of Criminal Procedure, as added by this Act, apply to the use of a  
15 statement resulting from a custodial interrogation that occurs on  
16 or after March 1, 2018, regardless of whether the criminal offense  
17 giving rise to that interrogation is committed before, on, or after  
18 that date.

19           SECTION 11. Article 38.075(c), Code of Criminal Procedure,  
20 as added by this Act, applies to the admissibility of evidence in a  
21 criminal proceeding that commences on or after the effective date  
22 of this Act. The admissibility of evidence in a criminal proceeding  
23 that commences before the effective date of this Act is governed by  
24 the law in effect on the date the proceeding commenced, and the  
25 former law is continued in effect for that purpose.

26           SECTION 12. (a) Section 3(d), Article 38.20, Code of  
27 Criminal Procedure, as added by this Act, applies only to a

1 photograph or live lineup identification procedure conducted on or  
2 after the effective date of this Act, regardless of whether the  
3 offense to which the procedure is related was committed before, on,  
4 or after the effective date of this Act.

5 (b) Section 5, Article 38.20, Code of Criminal Procedure, as  
6 amended by this Act, applies only to the trial of an offense with  
7 respect to which a prior photograph or live lineup identification  
8 of the accused occurred on or after the effective date of this Act,  
9 regardless of whether the offense that is the subject of the trial  
10 was committed before, on, or after the effective date of this Act.

11 SECTION 13. Article 39.14(h-1), Code of Criminal Procedure,  
12 as added by this Act, applies to the prosecution of an offense  
13 committed on or after the effective date of this Act. The  
14 prosecution of an offense committed before the effective date of  
15 this Act is governed by the law in effect on the date the offense was  
16 committed, and the former law is continued in effect for that  
17 purpose. For purposes of this section, an offense is committed  
18 before the effective date of this Act if any element of the offense  
19 occurs before the effective date.

20 SECTION 14. Not later than January 1, 2018, the Texas  
21 Commission on Law Enforcement shall establish the eyewitness  
22 identification education and training program as required by  
23 Section 1701.253(n), Occupations Code, as added by this Act.

24 SECTION 15. This Act takes effect September 1, 2017.

ADOPTED

✓✓  
MAY 23 2017

FLOOR AMENDMENT NO. 1

*Lataj Spaw*  
Secretary of the Senate

BY:

*Charles Rey*

1 Amend C.S.H.B. No. 34 (senate committee report) as follows:

2 (1) In SECTION 1 of the bill, in added Article 2.023(b),  
3 Code of Criminal Procedure (page 1, line 36), between  
4 "defendant," and "regardless,", insert "if known by the attorney  
5 representing the state,".

6 (2) In SECTION 3 of the bill, in added Section  
7 3(c)(2)(A)(i), Article 38.20, Code of Criminal Procedure (page  
8 3, lines 23 and 24), strike "that was provided by a witness".

9 (3) In SECTION 3 of the bill, in amended Section  
10 3(c)(2)(B), Article 38.20, Code of Criminal Procedure (page 3,  
11 lines 30 through 32), strike "and that the investigation will  
12 continue regardless of whether the witness identifies a person  
13 in the procedure".

14 (4) In SECTION 3 of the bill, strike amended Section  
15 3(c)(2)(E), Article 38.20, Code of Criminal Procedure (page 3,  
16 lines 40 through 44), and substitute the following:

17 (E) for a live lineup identification procedure,  
18 if practicable, procedures for assigning an administrator who is  
19 unaware of which member of the live lineup is the suspect in the  
20 case or alternative procedures designed to prevent opportunities  
21 to influence the witness;

22 (5) In SECTION 6 of the bill, in added Article 39.14(h-1),  
23 Code of Criminal Procedure (page 4, line 42), between "the  
24 defendant" and the underlined colon, insert "any information in  
25 the possession, custody, or control of the state that is  
26 relevant to the person's credibility, including".

27 (6) In SECTION 6 of the bill, in added Article 39.14(h-  
28 1)(2), Code of Criminal Procedure (page 4, line 49), following  
29 the underlined semicolon, insert "and".

1           (7) In SECTION 6 of the bill, in added Article 39.14(h-  
2 1)(3), Code of Criminal Procedure (page 4, line 54), strike ";  
3 and" and substitute ".".

4           (8) In SECTION 6 of the bill, strike added Article  
5 39.14(h-1)(4), Code of Criminal Procedure (page 4, lines 55 and  
6 56).

FLOOR AMENDMENT NO.

2

ADOPTED

MAY 23 2017 BY:

Charles Perry

*Leta B. ...*  
Secretary of the Senate

1 Amend C.S.H.B. No. 34 (senate committee report) in SECTION  
2 3 of the bill, in added Section 3(d), Article 38.20, Code of  
3 Criminal Procedure (page 3, line 57), by striking "the witness's  
4 level of confidence" and substituting "how confident the witness  
5 is".

# ADOPTED

FLOOR AMENDMENT NO. 3

MAY 23 2017

*Lacey Spaw* BY: *Charles Perry*  
Secretary of the Senate

1 Amend C.S.H.B. No. 34 (senate committee report) in SECTION  
2 4 of the bill, by striking added Section 5(c), Article 38.20,  
3 Code of Criminal Procedure (page 4, lines 9-19), and  
4 substituting the following:

5 (c) If a witness who has previously made an out-of-court  
6 photograph or live lineup identification of the accused makes an  
7 in-court identification of the accused, the eyewitness  
8 identification is admissible into evidence against the accused  
9 only if the evidence is accompanied by the details of each prior  
10 photograph or live lineup identification made of the accused by  
11 the witness, including the manner in which the identification  
12 procedure was conducted.

ADOPTED

MAY 23 2017

*Lotay Spaw*  
Secretary of the Senate

FLOOR AMENDMENT NO. 4

BY: *Charles Perry*

1 Amend C.S.H.B. No. 34 (senate committee report) as follows:

2 (1) Strike SECTION 7 of the bill, adding Section  
3 1701.253(n), Occupations Code (page 4, lines 57-64).

4 (2) Strike SECTION 14 of the bill, providing transition  
5 language for Section 1701.253(n), Occupations Code (page 5, lines  
6 66-69).

7 (3) Add the following appropriately numbered SECTIONS to  
8 the bill:

9 SECTION \_\_\_\_\_. Chapter 2, Code of Criminal Procedure, is  
10 amended by adding Article 2.1386 to read as follows:

11 Art. 2.1386. EYEWITNESS IDENTIFICATION PROTOCOLS. (a) In  
12 this article, "law enforcement agency" means an agency of the state  
13 or an agency of a political subdivision of the state authorized by  
14 law to employ peace officers.

15 (b) The Texas Commission on Law Enforcement shall establish  
16 a comprehensive education and training program on eyewitness  
17 identification, including material regarding variables that affect  
18 a witness's vision and memory, practices for minimizing  
19 contamination, and effective eyewitness identification protocols.

20 (c) Each law enforcement agency shall require each peace  
21 officer who is employed by the agency and who performs eyewitness  
22 identification procedures to complete the education and training  
23 described by Subsection (b).

24 SECTION \_\_\_\_\_. Not later than January 1, 2018, the Texas  
25 Commission on Law Enforcement shall adopt the comprehensive  
26 education and training program required by Article 2.1386, Code of  
27 Criminal Procedure, as added by this Act.

28 (4) Renumber the SECTIONS of the bill accordingly.

**LEGISLATIVE BUDGET BOARD**  
**Austin, Texas**

**FISCAL NOTE, 85TH LEGISLATIVE REGULAR SESSION**

**May 25, 2017**

**TO:** Honorable Joe Straus, Speaker of the House, House of Representatives

**FROM:** Ursula Parks, Director, Legislative Budget Board

**IN RE: HB34** by Smithee (Relating to measures to prevent wrongful convictions.), **As Passed 2nd House**

<b>No significant fiscal implication to the State is anticipated.</b>
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The bill would amend the Code of Criminal Procedure to require prosecutor's offices to track certain testimonies and require recording of interrogations by law enforcement agencies when investigating certain offices. The bill would require the Texas Commission on Law Enforcement (TCOLE) to establish a statewide comprehensive education and training program on eyewitness identification practices and protocols and would require certain law enforcement officers to complete the training. The bill would also direct the Texas Forensic Science Commission to conduct studies regarding the use of drug field test kits and crime scene investigations. According to the Office of Court Administration (OCA), the bill would implement the recommendations of the Timothy Cole Exoneration Review Commission. The Department of Criminal Justice, the Office of the Governor, the Department of Public Safety, TCOLE and OCA report that no significant fiscal impact is anticipated to implement the provisions of the bill. The bill would go into effect September 1, 2017.

**Local Government Impact**

According to OCA, the Timothy Cole Exoneration Review Commission surveyed law enforcement agencies during the interim and found that most already electronically record interrogations. The survey also found that the average cost of purchasing electronic digital recording equipment was less than \$5,000. No significant fiscal impact is anticipated.

According to the Texas Municipal Police Association (TMPA), law enforcement agencies could incur costs associated with travel, per diem, hotel and shift replacement as it relates to additional training. The fiscal impact cannot be determined at this time and costs would be contingent upon the amount of training hours required.

According to the San Antonio Police Department and the Houston Police Department, no fiscal impact is anticipated.

**Source Agencies:** 212 Office of Court Administration, Texas Judicial Council, 300 Trusteed Programs Within the Office of the Governor, 405 Department of Public Safety, 407 Commission on Law Enforcement, 696 Department of

Criminal Justice

**LBB Staff:** UP, KJo, AI, KVe, LBe, JGA

**LEGISLATIVE BUDGET BOARD**  
**Austin, Texas**

**FISCAL NOTE, 85TH LEGISLATIVE REGULAR SESSION**

**May 21, 2017**

**TO:** Honorable John Whitmire, Chair, Senate Committee on Criminal Justice

**FROM:** Ursula Parks, Director, Legislative Budget Board

**IN RE:** **HB34** by Smithee (Relating to measures to prevent wrongful convictions.), **Committee Report 2nd House, Substituted**

**No significant fiscal implication to the State is anticipated.**

The bill would amend the Code of Criminal Procedure to require prosecutor's offices to track certain testimonies and require recording of interrogations by law enforcement agencies when investigating certain offices. The bill would require the Texas Commission on Law Enforcement (TCOLE) to establish a statewide comprehensive education and training program on eyewitness identification practices and protocols. The bill would also direct the Texas Forensic Science Commission to conduct studies regarding the use of drug field test kits and crime scene investigations. According to the Office of Court Administration (OCA), the bill would implement the recommendations of the Timothy Cole Exoneration Review Commission. The Department of Criminal Justice, the Office of the Governor, the Department of Public Safety, TCOLE and OCA report that no significant fiscal impact is anticipated to implement the provisions of the bill. The bill would go into effect September 1, 2017.

**Local Government Impact**

According to OCA, the Timothy Cole Exoneration Review Commission surveyed law enforcement agencies during the interim and found that most already electronically record interrogations. The survey also found that the average cost of purchasing electronic digital recording equipment was less than \$5,000. No significant fiscal impact is anticipated.

**Source Agencies:** 212 Office of Court Administration, Texas Judicial Council, 300 Trusteed Programs Within the Office of the Governor, 405 Department of Public Safety, 407 Commission on Law Enforcement, 696 Department of Criminal Justice

**LBB Staff:** UP, KJo, AI, KVe, LBe, JGA

**LEGISLATIVE BUDGET BOARD**

**Austin, Texas**

**FISCAL NOTE, 85TH LEGISLATIVE REGULAR SESSION**

**May 19, 2017**

**TO:** Honorable John Whitmire, Chair, Senate Committee on Criminal Justice

**FROM:** Ursula Parks, Director, Legislative Budget Board

**IN RE: HB34** by Smithee (Relating to measures to prevent wrongful convictions.), **As Engrossed**

**No significant fiscal implication to the State is anticipated.**

The bill would amend the Code of Criminal Procedure to require prosecutor's offices to track certain testimonies and require recording of interrogations by law enforcement agencies when investigating felony cases. The bill would require the Texas Commission on Law Enforcement (TCOLE) to establish a statewide comprehensive education and training program on eyewitness identification practices and protocols. The bill would also direct the Texas Forensic Science Commission to conduct studies regarding the use of drug field test kits and crime scene investigations. According to the Office of Court Administration (OCA), the bill would implement the recommendations of the Timothy Cole Exoneration Review Commission. The Department of Criminal Justice, the Office of the Governor, the Department of Public Safety, TCOLE and OCA report that no significant fiscal impact is anticipated to implement the provisions of the bill. The bill would go into effect September 1, 2017.

**Local Government Impact**

According to OCA, the Timothy Cole Exoneration Review Commission surveyed law enforcement agencies during the interim and found that most already electronically record interrogations. The survey also found that the average cost of purchasing electronic digital recording equipment was less than \$5,000. No significant fiscal impact is anticipated.

**Source Agencies:** 212 Office of Court Administration, Texas Judicial Council, 300 Trusteed Programs Within the Office of the Governor, 405 Department of Public Safety, 407 Commission on Law Enforcement, 696 Department of Criminal Justice

**LBB Staff:** UP, KJo, AI, KVe, LBe, JGA

**LEGISLATIVE BUDGET BOARD  
Austin, Texas**

**FISCAL NOTE, 85TH LEGISLATIVE REGULAR SESSION**

**April 20, 2017**

**TO:** Honorable Joe Moody, Chair, House Committee on Criminal Jurisprudence

**FROM:** Ursula Parks, Director, Legislative Budget Board

**IN RE: HB34** by Smithee (Relating to measures to prevent wrongful convictions.), **Committee Report 1st House, Substituted**

**No significant fiscal implication to the State is anticipated.**

The bill would amend the Code of Criminal Procedure to require prosecutor's offices to track certain testimonies and require recording of interrogations by law enforcement agencies when investigating felony cases. The bill would require the Texas Commission on Law Enforcement (TCOLE) to establish a statewide comprehensive education and training program on eyewitness identification practices and protocols. The bill would also direct the Texas Forensic Science Commission to conduct studies regarding the use of drug field test kits and crime scene investigations. According to the Office of Court Administration (OCA), the bill would implement the recommendations of the Timothy Cole Exoneration Review Commission. The Department of Criminal Justice, the Office of the Governor, the Department of Public Safety, TCOLE and OCA report that no significant fiscal impact is anticipated to implement the provisions of the bill. The bill would go into effect September 1, 2017.

**Local Government Impact**

According to OCA, the Timothy Cole Exoneration Review Commission surveyed law enforcement agencies during the interim and found that most already electronically record interrogations. The survey also found that the average cost of purchasing electronic digital recording equipment was less than \$5,000. No significant fiscal impact is anticipated.

**Source Agencies:** 212 Office of Court Administration, Texas Judicial Council, 300 Trusteed Programs Within the Office of the Governor, 405 Department of Public Safety, 407 Commission on Law Enforcement, 696 Department of Criminal Justice

**LBB Staff:** UP, KJo, AI, KVe, LBe, JGA

**LEGISLATIVE BUDGET BOARD**  
**Austin, Texas**

**FISCAL NOTE, 85TH LEGISLATIVE REGULAR SESSION**

**April 2, 2017**

**TO:** Honorable Joe Moody, Chair, House Committee on Criminal Jurisprudence

**FROM:** Ursula Parks, Director, Legislative Budget Board

**IN RE: HB34** by Smithee (Relating to measures to prevent wrongful convictions.), **As Introduced**

<b>No significant fiscal implication to the State is anticipated.</b>
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The bill would amend the Code of Criminal Procedure to require prosecutor's offices to adopt policies related to certain testimonies and require recording of interrogations by law enforcement agencies when investigating felony cases. The bill would require the Texas Commission on Law Enforcement (TCOLE) to establish a statewide comprehensive education and training program on eyewitness identification practices and protocols. The bill would also direct the Texas Forensic Science Commission to conduct studies regarding the use of drug field test kits and crime scene investigations. According to the Office of Court Administration (OCA), the bill would implement the recommendations of the Timothy Cole Exoneration Review Commission. The Department of Criminal Justice, the Office of the Governor, the Department of Public Safety, TCOLE and OCA report that no significant fiscal impact is anticipated to implement the provisions of the bill. The bill would go into effect September 1, 2017.

**Local Government Impact**

According to OCA, the Timothy Cole Exoneration Review Commission surveyed law enforcement agencies during the interim and found that most already electronically record interrogations. The survey also found that the average cost of purchasing electronic digital recording equipment was less than \$5,000. No significant fiscal impact is anticipated.

**Source Agencies:** 212 Office of Court Administration, Texas Judicial Council, 300 Trusteed Programs Within the Office of the Governor, 405 Department of Public Safety, 407 Commission on Law Enforcement, 696 Department of Criminal Justice

**LBB Staff:** UP, KJo, AI, KVe, LBe, JGA